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2:08-cv-00441-LRH-LRL

Motion to Reduce Attorneys' Lien to Judgment and to Enforce Lien (#61)

Defendants.

This case comes before the court on Jimmerson Hansen's Emergency Motion to Reduce Attorneys' Lien to Judgment and to Enforce Lien (#61). The court has considered the motion, plaintiffs' Opposition (#69), defendants' Opposition (#70), plaintiffs' Joinder to Defendants' Opposition (#71), Jimmerson Hansen's Reply (#76), and the representations and arguments of counsel during the hearing on November 3, 2009.

On February 12, 2008, plaintiff's wife, Deshira Selimaj, was shot and killed by a Henderson Police officer. On February 19, 2008, plaintiff retained Jimmerson Hanson (hereafter "JH") to (1) file a civil action against the Henderson Police Department and any of its officers who were involved in the shooting incident, (2) assist plaintiff with the Coroner's Inquest, and (3) defend plaintiff against a misdemeanor charge brought by the City of Henderson. JH hired a private investigator, who located nearly a dozen eye witnesses to the shooting, some of whose accounts of what they saw supported plaintiff's version of the incident.

1 JH also retained an expert on police practices and use of force, an expert on ballistics, and a
2 forensic pathologist who performed an independent autopsy.

3 On April 4, 2008, six days before a Coroner's Inquest was to begin, JH filed a civil
4 complaint in state court against the City of Henderson and its Police Chief, and Clark County
5 and its District Attorney, seeking an order requiring the defendants to conduct the inquest
6 impartially and to give plaintiff access to the state's evidence. On April 7, 2008, the defendants
7 removed the case to the federal court in Las Vegas. On April 8, 2008, plaintiff filed an
8 emergency motion to remand the case to state court, or, in the alternative, for a preliminary
9 injunction seeking virtually the same relief originally sought in state court regarding the inquest
10 proceeding. The Honorable Larry R. Hicks, U.S. District Judge, denied the motion on April 9,
11 2008. The Coroner's Inquest went forward on April 10 and 11, 2008. The central issue was
12 whether at the time of the shooting Mrs. Selimaj was wielding a knife and posing an immediate
13 threat of physical harm to the officers. The Coroner's Jury concluded that the shooting was
14 justified. The City of Henderson thereafter dropped its misdemeanor charge against plaintiff.

15 On June 16, 2008, the firm of Cristalli & Saggese formally substituted into this case as
16 counsel for plaintiff. *See* Substitution of Counsel (#21, filed June 17, 2008). Plaintiff and JH
17 have different perspectives on what led to the undoing of their attorney-client relationship, and
18 on whether plaintiff should have to reimburse JH for the costs it fronted on plaintiff's behalf.
19 At the November 3, 2009 hearing, plaintiff maintained that JH had "fired him." Upset that he
20 had been "fired," plaintiff believed it would be "wrong" for the court to make him reimburse
21 JH for the costs. Alternatively he was particularly troubled by the amount of money that had
22 been paid to the private investigator.

23 Contrariwise, JH asserted at the hearing that plaintiff had been making certain demands
24 that JH had been unwilling or unable to meet, such as plaintiff's demand that JH provide him
25 with living expenses. JH also complained that plaintiff had been ungrateful for the hard work
26 that JH had done on his behalf, and had talked about wanting to hire Marc Saggese as his

1 attorney. Most importantly, JH advised the court that when it gave plaintiff a candid assessment
2 of the potential weaknesses of his case, "it did not go over well with him." Indeed, according
3 to JH, plaintiff became quite upset with JH. In or about late May or early June, 2008, plaintiff
4 contacted Mr. Saggese concerning his possible representation of plaintiff. At about the same
5 time plaintiff and JH agreed to go their separate ways.

6 The understanding between JH and plaintiff was memorialized in a letter from James
7 Jimmerson, dated June 2, 2008, a copy of which is appended to this R&R as Attachment 1. Mr.
8 Jimmerson wrote, in pertinent part:

9 This letter is sent to confirm our mutual understanding that this
10 firm will not be going forward and will not be representing you in
11 any further matters involving the City of Henderson arising from
the shooting of your wife by a City of Henderson Police Officer,
Luke Morrison in February of 2008.

* * *

12 I take it as a fair statement that notwithstanding the testimony of
13 other witnesses as well as yourself, that Deshira was wielding a
14 knife at the time that she was shot. The testimony of your children
15 is also powerful evidence of the same even though the
16 circumstances of obtaining their statements is highly unusual and,
in my opinion, inappropriate. Our expert consultant, Mr.
Martinelli, has concluded that the City of Henderson Police acted
reasonably and under qualified immunity in light of your wife
wielding a knife at the time she was shot.

17 Mr. Jimmerson wrote that although he did not "for a moment" believe the shooting was
18 justified, he noted that "Henderson policy and procedure does allow for the use of deadly force
19 in responding to a person who is wielding a knife. To date, I have not found an expert
20 consultant who would agree with our side." Hence, "we are unwilling to commence litigation
21 against the City of Henderson, and related entities in a federal or state court action." He added,
22 "In light of the substantial amount of time and costs we have already expended on your behalf,
23 which you are not under any obligation to repay unless you succeed in recovering a settlement
24 or verdict in your matter through other means, ... we would expect you to reimburse us for our
25 costs only. ... As noted above, your only obligation to our firm is to reimburse this firm the
26 substantial out-of-pocket costs that we have expended on your behalf in the event you obtain

1 a recovery.” On June 16, 2008, the day JH and Cristalli & Saggese signed the substitution of
2 counsel, JH filed a Notice of Attorney’s Lien and Lien (#19). On July 29, 2009, JH served a
3 Notice of Amended Attorney’s Lien and Amended Lien in the principal amount of \$19,633.26,
4 which, with interest at the rate of 1½ % per month, totaled \$23,825.99.

5 On February 19, 2009, plaintiff’s new counsel, Mr. Saggese, filed an amended complaint
6 accusing the Henderson Police Department and a number of its officers of a variety of federal
7 civil rights violations and a number of related state torts arising out of excessive use of force by
8 the Police Department in the shooting death of Deshira Selimaj. Six months later, on August
9 14, 2009, the parties submitted a Joint Status Report (#60), in which they announced that they
10 had reached a settlement. On the same day JH filed the instant Emergency Motion to Reduce
11 Attorneys’ Lien to Judgment and to Enforce Lien (#61).

12 DISCUSSION

13 There is no issue regarding JH’s right to enforce the attorney’s lien, and reduce it to
14 judgment. See N.R.S. 18.015(4) and *Gordon v. Stewart*, 74 Nev. 115, 118, 324 P.2d 234, 235-
15 36 (1958). Nor is there an issue whether the lien can be adjudicated at this stage of the
16 litigation. This case has settled, and plaintiff has been paid. Cf. *Montgomery v. Etreppid*
17 *Technologies, LLC*, 2007 WL 3015226 (D. Nev. 2007).¹ The only issue presented here is
18 whether the costs were properly incurred and were reasonable.

19 At the hearing plaintiff quite emotionally, but equally illogically, insisted that because
20 JH “fired” him, he should not have to pay any of the costs advanced by JH. Based on the record
21 as a whole, it is clear to the undersigned that plaintiff misapprehends the cause of the dissolution
22 of his attorney-clients relationship with JH. It was, of course, JH’s responsibility to provide its
23 client with an objective analysis of the strengths and weaknesses of his case, and not merely tell
24 him what he wanted to hear. It is apparent that when JH began to explain to plaintiff that his
25

26 ¹ The firm of Cristalli & Saggese has set aside funds that will satisfy the lien.

1 case had certain weaknesses, plaintiff simply did not want to hear it. It appears that because
2 plaintiff was unable emotionally to accept JH's view, he lost confidence in the firm, and set
3 about to find new counsel. In essence it appears to be plaintiff's feeling that because JH did not
4 tell plaintiff he would win his case hands down at trial, plaintiff should not be required to
5 reimburse JH's costs. Such a view is unsupportable as a matter of law.

6 The Attorney's Retainer Agreement dated February 19, 2008, attached to JH's
7 Emergency Motion (#61) as Exhibit 2, provides in ¶ 6:

8 CLIENT shall advance and pay to ATTORNEY all costs including,
9 but not limited to, court reporter fees, expert consultant and witness
10 fees, computer research fees, private investigator fees, process
11 server fees, courier fees, copy charges, long distance phone calls,
12 filing fees, mailing costs, parking fees and other disbursements
13 made in connection with this matter. ... **Any unpaid costs will be
deducted from the CLIENT's share of any recovery in the
matter after the above fee calculations are made from the gross
settlement amount. CLIENT is responsible for costs regardless
of the outcome of the case.**

14 (Emphasis in the original). The retainer agreement was signed by Mr. Selimaj and Mr.
15 Jimmerson.

16 In the alternative, plaintiff asserts that the costs for which JH is seeking reimbursement
17 are too high. Specifically, he claims that he "doesn't understand" why so much money was paid
18 to the private investigator. JH's Detail Cost Transaction List attached to JH's Emergency
19 Motion (#61) as Exhibit 10, purports to detail all costs paid by JH during this litigation. With
20 regard specifically to the fees paid to the investigator, Hal DeBecker of DeBecker
21 Investigations, Inc., the Cost Transaction List reflects that Mr. DeBecker was paid a \$5,000.00
22 retainer on February 25, 2008, an additional \$3,068.35 on April 1, 2008, and a third and final
23 payment of \$1,520.00 on April 25, 2008, for a total of \$9,588.35. His hourly rate was \$95.00,
24 which was not excessive. Mr. DeBecker and another investigator spent three days locating
25 numerous witnesses, then Mr. DeBecker spent numerous hours interviewing plaintiff and all the
26 witnesses, and a full day doing background research on a key police witness and another full day

1 attending the Coroner's Inquest. *See* the DeBecker Investigations Invoices dated March 28,
2 2008 and April 11, 2008, attached to Mario Lovato's November 3, 2009 letter faxed to the
3 undersigned's chambers on November 3, 2009; the November 3, 2009 letter is appended to this
4 R&R as Attachment 2. The investigator was hired shortly after the shooting incident, and was
5 able to identify close to a dozen eye witnesses, some of whom contradicted the official police
6 version of what occurred. Contrary to plaintiff's reservations about the need for the
7 investigator, the court finds that the investigator's work was necessary and helpful, and his fees
8 of \$9,588.35 were reasonable and justified.²

9 The court has reviewed JH's entire Detail Cost Transaction List, and finds that none of
10 the costs was either unnecessary or unreasonable. The court therefore finds that the total costs
11 of \$19,633.26 were reasonable and necessary, and should be reimbursed by plaintiff. The court
12 also finds, however, that the rate of interest on the unpaid costs of 1½% per month, or 18% per
13 year, is excessive. The undersigned therefore recommends that interest on the unpaid costs be
14 reduced to 3% per year.

15 ...

16 ...

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23
24
25 ² In his November 3, 2009 letter to the undersigned, Mr. Lovato states that Mr. DeBecker billed for
26 only \$4,608.35, which was paid out of the initial \$5,000.00 retainer. Mr. DeBecker's invoices and JH's
Detail Cost Transaction File List reflect, however, that the total amount billed by Mr. DeBecker was
\$9,588.35, and the total amount paid to him was \$9,588.35.

RECOMMENDATION

Based on the foregoing, it is the recommendation of the undersigned U.S. Magistrate Judge that Jimmerson Hansen's Emergency Motion to Reduce Attorneys' Lien to Judgment and to Enforce Lien (#61) be granted to the following extent: the court should require plaintiff to reimburse Jimmerson Hansen the sum of \$19,633.26 for the costs Jimmerson Hansen expended on plaintiff's behalf in this litigation, plus interest at the rate of 3% per year.

DATED this 29th day of March, 2010.



LAWRENCE R. LEAVITT
UNITED STATES MAGISTRATE JUDGE

ATTACHMENT 1



James J. Jimmerson *
Lynn M. Hansen *
Maio P. Lavato *
Michele L. Roberts
*ALSO ADMITTED IN CALIFORNIA

Personal & Confidential

June 2, 2008

Mr. Zyber Selimaj
268 Hyssop Court
Henderson, NV 89015

Re: Selimaj, et al. v. City of Henderson, et al.

Dear Zyber:

This letter is sent to confirm our mutual understanding that this firm will not be going forward and will not be representing you in any further matters involving the City of Henderson arising from the shooting of your wife by a City of Henderson Police Officer, Luke Morrison in February of 2008.

This decision has not been an easy one to reach but is one that we believe is appropriate under the facts and circumstances of this matter. We appreciate your expression of confidence in our firm and we have responded by advancing tens of thousands of dollars on your behalf through the hiring of multiple experts as well the expenditure of hundreds of hours of work on your behalf in this case, after you retained our firm, and through the coroner's inquest and subsequent conversations and meetings thereafter.

I take it as a fair statement that notwithstanding the testimony of other witnesses as well as yourself, that Deshira was wielding a knife at the time that she was shot. The testimony of your children is also powerful evidence of the same even though the circumstances of obtaining their statements is highly unusual and, in my opinion, inappropriate. Our expert consultant, Mr. Martinelli, has concluded that the City of Henderson Police acted reasonably and under qualified immunity in light of your wife wielding a knife at the time she was shot.

I do not believe for a moment that the shooting was justified. Deshira was either on her knees or in a crouching position or attempting to stand up at the time that she was shot. She posed no serious threat to the trained police officers. Nonetheless, Henderson policy and procedure does allow for the use of deadly force in responding to a person who is wielding a knife. To date, I have not found an expert consultant who would agree with our side.

In light of the substantial amount of time and costs we have already expended on your behalf, which you are not under any obligation to repay unless you succeed in recovering a settlement or verdict in your matter through other means, at which time we would expect you to reimburse us for our costs only, and in light of the challenges that we foresee in going forward in this matter, we are unwilling to commence litigation against the City of Henderson, and related entities in a federal or state court action.

In light of the same, you are urged to consult other counsel to obtain a second opinion. If you desire to go forward with this litigation you certainly are free to retain other counsel. As noted above, your only obligation to our firm is to reimburse this firm the substantial out-of-pocket costs that we have expended on your behalf in the event you obtain a recovery.

I will also note that we have appreciated the opportunity of working with you, but do note that there seems to be an absence of appreciation by you of all the hard work, time, energy and money that we have expended on your behalf. We know that this has been an incredibly difficult time for you, a real tragedy. However, your conduct towards us evidences the fact that you appear to us to be exceedingly ungrateful for our efforts. We successfully handled all of your matters pending before the City of Henderson in the criminal cases, obtained a dismissal of the charges pending against you, with prejudice, foreclosed the City's desire to see an Order to Show Cause why you should not have your probation revoked in the earlier case, and proceeded with your case with vigor through the Coroner's Inquest. These efforts, at least based upon your last meeting with us and telephone calls to us, appear to be forgotten by you and/or unappreciated.

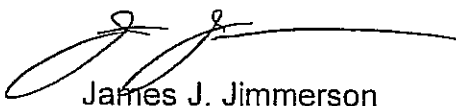
Your difficult financial position is in no way due to anything that our firm has done, yet you wish to blame anyone and everyone you can for your own financial troubles, which is unfair to us.

We do wish the best to you and to your three children and wish you much success in the future. Your thought of moving out of state we believe is clearly in your best interest, regardless whether you go forward with litigation against the City of Henderson or not. In some regard you may be viewed as a "marked man" by the City of Henderson Police Department. I have observed their behavior in this matter, and others, I believe you will receive little compassion from many of those officers if your paths cross again in the future.

You are free to retain counsel of your choice as we will not be going forward on your behalf on any matter. Assuming you decide to pursue this case with new counsel, the statute of limitations that would likely apply to your case is a two-year statute of limitations, however, because civil rights claims do not have clear-cut statute of limitations, we strongly recommend that you file the case within one year. Accordingly, to ensure that your case is not dismissed for being untimely, we strongly recommend that you have your next attorney file the case on or before February 11, 2009.

Sincerely,

Jimmerson Hansen, P.C.



James J. Jimmerson

JJJ/mg

cc: Mario P. Lovato, Esq.
Accounting

ATTACHMENT 2

**JIMMERSON HANSEN
ATTORNEYS AT LAW**

**415 SOUTH SIXTH STREET • SUITE 100 • LAS VEGAS, NEVADA 89101
TELEPHONE: (702) 388-7171 • FACSIMILE: (702) 387-1167**

Date: Nov. 3, 2009 Time: 11:47 a.m. No. of Pages: (including cover sheet): 5

Deliver To: Hon. Lawrence R. Leavitt (702) 464-5541
Marc A. Saggese, Esq. (702) 382-2977
Peter Angulo, Esq. (702) 383-0701
From: Mario P. Lovato, Esq.

Client Name: Zyber Selimaj
Client Number:

- ☐ Original will **NOT** Follow
- ☒ Original will Follow By: U.S. Mail
- ☐ Please Call Upon Receipt
- ☐ Response Needed By:
- ☐ For Your Approval/Suggestions/Information
- ☐ Service by Facsimile pursuant to EDCR 7.26

MESSAGE: Attached is letter from Mario P. Lovato, Esq. to Hon. Lawrence R. Leavitt dated November 3, 2009.

IF YOU DO NOT RECEIVE ALL PAGES PLEASE CONTACT US IMMEDIATELY AT (702) 388-7171

The information contained in this facsimile is from the law firm of Jimmerson Hansen which may be confidential and may also be attorney-privileged. The information is intended for the use of the individual or entity to whom it is addressed and others who have been specifically authorized to receive it. If you are not the intended recipient, you are hereby notified that any disclosure, dissemination, distribution, use or copying of the contents of this information is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (702-388-7171) or by electronic mail (attorneys@jimmersonhansen.com) immediately and return the original message to us at the address above via the appropriate means of post. Thank you.

Sent by: Margery Gilmore



James J. Jimmerson *
Lynn M. Hansen *
Mario P. Lovato *
Michela L. Roberts
Soraya M. Vega
Shawn M. Goldstein
*ALSO ADMITTED IN CALIFORNIA

Via Facsimile (464-5541) & U.S. Mail

November 3, 2009

Hon. Lawrence R. Leavitt
United States District Court
District of Nevada
333 Las Vegas Blvd. South
Las Vegas, NV 89101

Re: Zyber Selimaj adv. City of Henderson

Dear Magistrate Judge Leavitt:

This letter is written to clear up, and correct, any confusion that arose in relation to a couple inquiries made at the hearing that took place on November 3, 2009.

Your Honor inquired of the rate charged by our investigator, Hal Debecker. I responded by stating, "I do not know," and later stated that it might have been \$150 per hour, but that I was not sure. As the attached invoices show, Mr. Debecker's rate was \$95 per hour.

Also, reference was repeatedly made at the hearing to Mr. Debecker charging \$10,000. In fact, the original reference in the cost detail is to a \$5,000 **retainer**. The two other references to amounts are to bills for services rendered, whose payment was taken out of that retainer. Mr. Debecker only charged \$5,000 for his services in this case. He billed a total of \$4,608.35 during the first two months. He never sent a bill for the third month of work he did, after learning that the client and the firm agreed that the representation would end. He charged nothing for his services that month although he continued obtaining witnesses and other evidence and even attended the Coroner's Inquest. The enclosed invoices further detail these matters.

Sincerely,

Jimmerson Hansen

Mario P. Lovato, Esq.

Enclosure

cc: Mark Saggese, Esq., via facsimile (382-2977)
Peter Angulo, Esq., via facsimile (383-0701)

**JIMMERSON HANSEN
CHECK REQUEST FORM**

Date/Time Needed:

Date:

Client Name:

Selinger, Zyfer

Client No.:

Check Amount:

\$5,000.00

Check Payable to:

Hal De Becker

Reason for Check:

Retainer

Tax ID/SSN of Vendor:

Check Requested By:

JS

Return to/Mail:

FOR ACCOUNTING ONLY:

Check Number:

Date Issued:

JIMMERSON HANSEN, P.C. / CORPORATE ACCOUNT

51340

*Hal De Becker**\$5,000.00**Zyfer Selinger**5208.01*

POSTED

DE BECKER INVESTIGATIONS, INC.

2360 W. Flamingo Rd., #110

Las Vegas, NV 89147

Phone: (702) 380-3801 Fax: (702) 383-9527

www.debeckerinvestigations.com

INVOICE

Bill To: Jimmerson Hansen Law Offices
415 S. 6th Street
Las Vegas, NV 89101

Date: 3/28/2008
Invoice No: 0861
Federal Tax ID No: 20-3514701

Attn: Jim Jimmerson

Re: Deshira Selimaj Investigation

DESCRIPTION	DATE	HOURS	TOTAL MILES	RATE	AMOUNT
Consultation - Zyher Zelimaj	2/16/2008	3		\$ 95.00	\$ 285.00
Witness Location: Two Investigators	2/17/2008	6		\$ 190.00	\$ 1,140.00
Two Investigators	2/18/2008	7		\$ 190.00	\$ 1,330.00
Two Investigators	2/19/2008	6		\$ 190.00	\$ 1,140.00
A. Goldman / Z. Selimaj Interview	2/20/2008	3		\$ 95.00	\$ 285.00
Witness Interview: Delaine Bomparola	2/21/2008	1.5		\$ 95.00	\$ 142.50
Ian Campo	2/21/2008	2		\$ 95.00	\$ 190.00
Witness Interview: Maria Saltonstall	2/22/2008	2		\$ 95.00	\$ 190.00
Astrid Bean	2/22/2008	2		\$ 95.00	\$ 190.00
Derrick Stewart	2/23/2008	2		\$ 95.00	\$ 190.00
Document Preparation	2/25/2008	4		\$ 95.00	\$ 380.00
Witness Interview: Allison McGrath	3/7/2008	2		\$ 95.00	\$ 190.00
Document Preparation	3/10/2008	5		\$ 95.00	\$ 475.00
	03/11/08	2		\$ 95.00	\$ 190.00
Witness Interview: Sean Trejo	03/12/08	4		\$ 95.00	\$ 380.00
Witness Interview: Melanie Nelson	3/13/2008	2		\$ 95.00	\$ 190.00
Statements	3/16/2008	2		\$ 95.00	\$ 190.00
	3/19/2008	1.5		\$ 95.00	\$ 142.50
	3/21/2008	2		\$ 95.00	\$ 190.00
	3/25/2008	1.5		\$ 95.00	\$ 142.50
Document Preparation - Mario Lovato	3/26/2008	2.5		\$ 95.00	\$ 237.50
Written Statemen - Derrick Stewart	3/26/2008	1.5		\$ 95.00	\$ 142.50
Mileage			247	\$ 0.55	\$ 135.85
SUB TOTAL:					\$ 8,088.35
RETAINER:					\$ 5,000.00

TOTAL HOURS: 64.5

TOTAL DUE: \$ 3,088.35

CONFIDENTIAL DOCUMENT

DE BECKER INVESTIGATIONS, INC.

9360 W. Flamingo Rd., #110

Las Vegas, NV 89147

Phone: (702) 380-3801 Fax: (702) 383-9527

www.debeckerinvestigations.com

INVOICE

Bill To: Jimmerson Hansen Law Offices
415 S. 6th Street
Las Vegas, NV 89101

Date: 4/11/2008
Invoice No: 0876
Federal Tax ID No: 20-3514781

Attn: Jim Jimmerson

Re: Deshira Selimaj Investigation

DESCRIPTION	DATE	HOURS	TOTAL MILES	RATE	AMOUNT
Research - Morrison	3/28/2008	7		\$ 95.00	\$ 665.00
Locate - Jason Fitzpatrick	4/8/2008	2		\$ 95.00	\$ 190.00
Research - Coroners Inquest	4/11/2008	7		\$ 95.00	\$ 665.00
MILEAGE				\$ 0.55	
				SUB TOTAL:	\$ 1,520.00
				RETAINER:	

TOTAL HOURS: 16

TOTAL DUE: \$ 1,520.00

CONFIDENTIAL DOCUMENT